IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8929 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

R P CHAUHAN

Versus

DIST. SUPDT OF POLICWE

Appearance:

1. Special Civil Application No. 8929 of 1989

MR YN OZA for Petitioner No. 1

RULE SERVED for Respondent No. 1-3

MR MA BUKHARI, AGP for Respondent No. 4

MR BB NAIK for Respondent No. 4

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 14/02/2003

ORAL JUDGEMENT

Earlier this matter was fixed on 24th January, 2003. The matter was argued at length by Mr.Saurabh Mehta, the learned advocate appearing for Mr.Y.N.Oza, the learned Senior Counsel for the petitioner. Mr.Saurabh Mehta has requested the Court to adjourn the matter so as to seek the instruction from his client as to whether the petition is to be withdrawn or not. The matter was adjourned to 31st January, 2003 and on 31st January, 2003 again it was adjourned. The matter is called out twice today, neither the petitioner nor his advocate remained present. The Court is, therefore, of the view that the petitioner is not interested in pursuing the petition. Hence, this petition is dismissed for default. Rule is discharged with no order as to costs.

(K.A.Puj, J.)

FURTHER ORDER :

After the above order is dictated and it is transcribed but before it is signed, Mr.Saurabh Mehta the learned advocate appearing for Mr.Y.N.Oza, the learned Senior Counsel for the petitioner submits that the petitioner does not want to withdraw the present petition and hence the same may be decided on merits. He has further submitted that while deciding this petition on merits the following three judgements of this Court may kindly be taken into consideration.

1) Bodu Tarmamad v. District Superintendent of Police, Jamnagar, reported in 1988 (1) GLR page 101
2) Dalabhai Bhimabhai Patel v. Deputy Commissioner of Police, Ahmedabad and another reported in 1991 (1) GLH 597
3) Mushtufakhan Gulabkhan Pathan v. State of Gujarat and another 1994 (1) GCD 798 (Guj)

In view of the above request made by Mr.Saurabh Mehta, the petition is now being disposed of on merits.

2. The present petition is filed against the order dated 29-10-1985 (Annexure-B) passed by respondent No.2, which was confirmed in Appeal by respondent No.3 vide order dated 7-2-1987 (Annexure-C) and again confirmed by Revisional Authority, i.e. respondent No.4-State of Gujarat by its order dated 19-10-1989 (Annexure-F), seeking prayer for quashing and setting aside the said orders and further seeking directions to the respondents to reinstate the petitioner in service with all consequential benefits with full back wages, as if no

order of removal dated 19-10-1989 was ever passed.

3. The brief facts giving rise to the present petition, as stated in the petition, are that the petitioner has joined his services as a constable on 6-8-1977 and was promoted to the post of Junior grade Head Constable in November, 1977. In the year 1978-79, when the petitioner was serving at Sarkhej Police Station, some allegations of misconduct were made against him and the petitioner was transferred to a far away place of Saigam Police Station in Banaskantha District on 15-4-1979 and thereafter, a charge sheet was issued to the petitioner on 27-3-1981 by the District Superintendent of Police, Ahmedabad Rural at Gandhinagar. The departmental inquiry was initiated against the petitioner. The charge levelled against the petitioner was that he was staying with one Pushpaben, the wife of Sureshchandra Kantilal residing at Kharakuva Pole, Relief Road, Ahmedabad and having illicit relations with her, which was not befitting to a police personnel. After completion of the inquiry, a show cause notice was issued to the petitioner for removing him from service. The petitioner has replied to the said show cause notice on 19-9-1981 and thereafter the order of punishment dated 20th December, 1983 was passed by the District Superintendent of Police, Banaskantha, whereby the petitioner was reduced in rank from Junior grade Head Constable to the post of Constable for a period of two years. The said order of punishment was served upon the petitioner on 23-12-1983 and since then he was serving on the post of Constable.

4. It has been further stated that before the period of two years expired, the petitioner was again served with a show cause notice dated 12-6-1985 by the Deputy Inspector General of Police, Gandhinagar at Gandhinagar respondent No.2 herein, calling upon the petitioner to show cause as to why the proposed punishment of removal from service should not be imposed upon him. The said show cause notice was issued in the exercise of suo motu powers under Section 27(C) of the Bombay Police Act. The petitioner gave reply to the said show cause notice contending that there was no case for exercise of suo motu powers for enhancing the punishment inflicted upon him before two years and there was no case where such powers could be exercised by the authorities against him. It was further stated that there was delay in exercise of the said suo motu powers under Section 27(C) of the Bombay Police Act and his case did not warrant extreme penalty of economic death. Despite this reply, the respondent No.2 had passed an order on 29-10-1985 and

removed the petitioner from service. It was stated in the said order that the charges levelled against the petitioner have been proved and therefore, the petitioner was required to be removed from service.

5. Being aggrieved by the said order of the respondent No.2, the petitioner preferred an appeal before the Director General of Police, Gujarat State, Ahmedabad-respondent No.3 herein, raising several contentions and pointing out that the impugned order of removal passed by respondent No.2 was not in accordance with law and on merit also and it deserves to be quashed and set aside. The respondent No.3, however, had dismissed the said appeal filed by the petitioner and confirmed the action of removal taken by the respondent No.2, vide order passed on 7-2-1987.

6. Being further aggrieved and dissatisfied by the order of the respondent No.3, the petitioner preferred a Revision Application before the State of Gujarat-respondent No.4 herein, pointing out that both the respondent Nos.2 and 3 were not justified in enhancing and confirming the punishment of removal from service and therefore, the said orders are required to be quashed and set aside. The said Revision Application also came to be rejected by the respondent No.4 vide order dated 19-10-1989 and being aggrieved by the said order, the present petition is filed by the petitioner under Article 226 of the Constitution of India.

7. The petition was admitted and rule was issued on 4-12-1989, however, no interim relief was granted by this Court. Mr.Saurabh Mehta, learned advocate appearing for the petitioner submitted that the incidence of alleged misconduct was pertaining to period of 1979 and the petitioner was chargesheeted on 27-3-1981. The petitioner was punished by order dated 20th December, 1983 and when the petitioner had almost undergone said punishment, the respondent No.2 on exercise of suo motu revisional powers inflicted the impugned order of removal and therefore, it suffers from the vices of delay and laches and therefore, the said order is improper, unlawful and unreasonable and it is also violative of Article 14 of the Constitution of India. Mr.Mehta has further submitted that the punishment of removal from service inflicted on the petitioner is an extreme penalty leading to economic death of an employee and the family of the concerned employee and therefore, it cannot be lightly inflicted. Mr.Mehta has further submitted that in case of misconduct involving moral turpitude a minor penalty may be imposed, but no major penalty can be

imposed. Since the removal from service is a major penalty on him in the circumstances of the case. In support of his submissions Mr.Mehta has relied on the decision of this Court in Bodu Tarmamad v. District Superintendent of Police, Jamnagar and another (supra) wherein it is held that "It can never be said that a Government servant cannot allow an unmarried girl to stay in the Government quarters occupied by him. It must be emphasized that there was no charge against the petitioner that he was misusing the girl or that he had any illicit relations with her, and that the Police line quarters were being used for such immoral purposes. The charge was simple enough that he allowed the girl to stay with him without performing marriage ceremony. Another count of charge was that he committed this "misconduct" without taking permission from any superior officer. To permit an adult girl to stay with one's own family is not "misdeed" or "misconduct". There is nothing to show that while permitting someone a male or female to stay in one's own house, permission of any superior officer is required to be taken. For occupying Government quarter, there is no such restriction."

8. Mr.Mehta has further relied on the decision of this Court in the case of Dalabhai Bhimabhai Patel v. Deputy Commissioner of Police, Ahmedabad and another (supra) wherein it is held that "Even assuming what is alleged in this charge-sheet to be gospel truth, it becomes at once clear that what is alleged against him in no case would amount to any misconduct or his involvement in the conduct not becoming of a police officer. If he was found in the house of another police constable at night time in the absence of owner of the house and had put on Lungi and white bush-shirt, even so, these are circumstances which by themselves and without anything more, would not amount to any conduct unbecoming of a police officer. No rule or any Statutory provision was brought to the notice of the court to indicate that it was a misconduct on the part of a police officer to put on a Lungi or white bush-shirt and to visit the house of some other police constable at night time. Consequently, even on the allegations mentioned in the charge-sheet, it cannot be said that the petitioner had indulged in a conduct which was unbecoming of a police officer."

9. Mr.Mehta has also relied on the decision in the case of Mushtufakhan Gulabkhan Pathan v. State of Gujarat and another (supra) wherein it is held that "the appellant merely guilty of showing himself as on duty in the register during nighthalt at Pathikashram at Gandhinagar though he was on sick leave to save some

charges in his nighthalts certainly amounts to misconduct but not so serious as to warrant extreme penalty of removal."

10. On the other hand, Mr.M.A.Bukhari, the learned Assistant Government Pleader appearing for the respondents has relied on the affidavit in reply filed by the Superintendent of Police, Banaskantha, opposing the relief prayed for in the petition. It is submitted that by virtue of Section 27(C) of the Bombay Police Act,1951 the respondent No.2 has the revisional powers with regard to any inquiry or proceedings of any subordinate Police Officer and hence he can call for any papers suo motu for the purpose of setting aside, reducing, confirming or enhancing the penalty imposed by the subordinate officer. While exercising the said powers, the show cause notice was issued by the respondent No.2 and the same was served on the petitioner on 3-9-1985. The petitioner has filed Special Civil Application No.5104/1985 on 19-9-1985 before this Court, challenging the said show cause notice dated 12-6-1985. The said petition was dismissed by this Court vide order dated 10-10-1985. Mr.Bukhari has submitted that this fact has not been disclosed by the petitioner in the present petition and hence the petition is suffering from the suppression of material facts and on this ground alone this petition deserves to be dismissed. Mr.Bukhari has further submitted that so far as the punishment of police officers below the rank of Inspector of Police are concerned, they are governed by the Bombay Police (Punishment and Appeals) Rules, 1956 and Rule 4 specifically says that for the purpose of imposing the penalty under Sub rule (1) of Rule 3 of Clause-II that is removal from service, does not disqualify from future employment in any department, except police department and after passing the reasoned order the said punishment can be imposed and it is well within the discretion of the disciplinary authority to impose such punishment. It is further submitted that there is no delay or laches so far as the order of punishment passed by the respondent No.2 is concerned, as the powers were exercised by the respondent No.2 within a reasonable period as the petitioner has initially challenged the show cause notice issued by the respondent No.2 and after dismissal of the Special Civil Application the reply was filed by the petitioner and after considering the reply of the petitioner the order of removal from service was passed by the respondent No.2. It was further submitted that the police Department is a disciplined force and is supposed to be in front of the public eye constantly and in no way the police personnels are allowed to be indulged into the activities, which may

be unbecoming of the police. The conduct of the petitioner was very serious and that is why the department has taken the view very seriously and passed the order of removal from service against the petitioner which cannot be said to be either improper, illegal or unjustified in eye of law. It is further submitted that the punishment was inflicted on the petitioner looking to the gravity of charges and allegations levelled against him and after giving him full fledged opportunity and after weighing the evidence and considering the family condition of the petitioner the order came to be passed and hence the said order should not be disturbed by this Court. Lastly, it is submitted that all the three authorities have given concurrent finding and order of removal from service was upheld in appeal as well as in revision and hence this Court while exercising the extraordinary writ jurisdiction under Article 226 or 227 of the Constitution of India would not disturb or interfere with the finding arrived at by the authorities below. Mr.Bukhari, learned AGP has, therefore, submitted that the petition should be dismissed with costs.

11. After having heard the learned advocate for the petitioner and Mr.M.A.Bukhari, learned AGP appearing for the respondent No.4 and after having gone through the pleadings of the parties contained in the petition as well as affidavit in reply and after having perused the documents attached therewith, I am of the view that the orders passed by the authorities below do not call for any interference by this Court. It is to be noted here that the charge levelled against the petitioner is of very serious nature. The petitioner being a part of disciplined force should not have behaved in a way, which is unbecoming of police personnel. The petitioner was staying with a married woman and developed illicit relations with her, though the petitioner himself was a married person having four children. Staying with a married woman under the same roof, was not merely a charge but during the course of departmental inquiry, after due and careful examination of the evidence led, the charge was proved against the petitioner. In such a situation, when the punishment originally inflicted upon the petitioner was found to be inadequate, the respondent No.2 was fully justified in suo motu calling for the papers and inflicting the further punishment of removal from service while exercising the powers vested in him under Section 27(C) of the Bombay Police Act, 1951. Not only this order was challenged by the petitioner in revision and the said order of revision confirming the dismissal order was further challenged before the State Government and the said proceedings have also met with

the same result. It is also equally important to take note of the fact that the petitioner has challenged the show cause notice before this Court and the petition was dismissed. This fact has not been disclosed by the petitioner in the present petition. It certainly amounts to suppression of facts and when the party does not come before the Court with clean hands, he cannot expect any relief from the Court.

12. As far as the authorities are concerned, they are clearly distinguishable on facts. In the case of Bodu Tarmamad v. District Superintendent of Police, Jamnagar, (supra), this Court has observed that there was no charge against the petitioner that he had allowed or had permitted Samubai to stay in the police line quarter. The charge was simple enough that he was a married man and yet he allowed a Hindu girl to stay with him in the police line quarter, without performing marriage ceremony, either as per Hindu rites or Momedian religion. It was not the charge that the petitioner in that petition was having illicit relations with the Hindu girl, who was staying with him. On the contrary, this Court has observed that there was no charge against the petitioner that he was misusing the girl, that he had any illicit relations with her and that the police line quarters were being used for such immoral purposes. Here in the present case, there was a specific charge to that effect that he was having illicit relations with a married woman. This by itself, distinguishes the case of the petitioner with the above case before this Court.

13. As far as the second authority cited by Mr.Mehta in the case of Dalabhai Bhimabhai Patel v. Deputy Commissioner of Police (supra) is concerned, wherein the chargesheet states only to the effect that the petitioner was found between 11:30p.m. to 11:45 p.m. on the night of 12-2-1976 in the house of police constable Mohansinh Survisinh in his absence, having put on Lungi and white bush shirt and in that context this Court has held that what was held in the charge sheet did not amount to any misconduct or conduct unbecoming of a police officer. This Court has further observed that these are the circumstances which by themselves would not amount to any conduct unbecoming of police officer. Here in the present case, not only the petitioner was staying with the married woman but these charges were proved during the course of departmental inquiry and hence, the case is clearly distinguishable from the above case.

14. In the case of Mushtafakhan Gulabkhan Pathan v. State of Gujarat and another (supra), the appellant in

that case was merely guilty of showing himself as on duty in the register during the night halt at Pathikashram at Gandhinagar though he was on sick leave to save some charges for his night halt. This Court has observed that it was certainly a misconduct, not so serious as to warrant extreme penalty of removal. It was further taken note of by this Court that it was an admitted position that they were not a married couple at the most, a lady could be styled as a mistress and whether or not to keep a mistress is a misconduct was the question and the Court has come to the conclusion that the conduct Rules of the police department from the Police Manual do not show that to have a mistress is a misconduct. Here in the present case, it is an admitted position that the petitioner, as well as, the woman who was staying with him both were married. To have any illicit relation with a married woman by itself is an offence under the Indian Penal Code. It is more so when the petitioner is himself a married person, having four children from his legally weded wife. Not only the petitioner was not loyal and faithful to his wife, but he also induced a woman to become disloyal and unfaithful to her husband. In such a situation, the misconduct of the petitioner cannot be viewed so lightly, especially when he is a police personnel. The public at large can expect from him safety and protection of their life and liberty. A person who has himself indulged in such activities, cannot give such protection to the public. In this view of the matter, he cannot be a fit person to be in the service of a disciplined force.

15. The authorities below, therefore, have taken a very correct and appropriate decision, which cannot be said to be either improper, unlawful, unjust or illegal on any count. I, therefore, do not find any substance or merits in the petition and hence it is dismissed. Rule is discharged with no order as to costs.

(K.A.Puj, J.)
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